



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: JUNE 08, 2022

IN THE MATTER OF:

Appeal Board No. 620976

PRESENT: MICHAEL T. GREASON, MEMBER

In Appeal Board Nos. 620974 and 620976, the claimant appeals from the decisions of the Administrative Law Judge filed January 12, 2022, insofar as they sustained initial determinations disqualifying the claimant from receiving benefits, effective May 3, 2020, on the basis that the claimant voluntarily separated from employment without good cause; and reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$441.15 on the basis that the claimant made a willful misrepresentation to obtain benefits.

In Appeal Board No. 620975, the claimant appeals from the decision of the Administrative Law Judge filed January 12, 2022, insofar as it sustained the initial determination charging the claimant with an

overpayment of \$7,741.00 in regular unemployment benefits recoverable pursuant to Labor Law § 597 (4), \$3,000.00 in Federal Pandemic Unemployment

Compensation (FPUC) benefits repayable pursuant to § 2104 (f) (2) of the

Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and Lost Wages Assistance (LWA) benefits of \$1,800.00 recoverable pursuant to 44 CFR Sec. 206.120 (f)(5), as modified to reduce the overpayment of regular unemployment benefits from \$7,741.00 to \$2,741.00.

At the combined telephone conference hearings before the Administrative Law Judge, testimony was taken. There were appearances by the claimant and on behalf of the employer.

Our review of the record reveals that the case should be remanded to hold a hearing. On appeal, the claimant has indicated that he failed to appear at the last hearing because he did not receive the Judge's phone call due to a technological issue beyond his control. In the interest of justice, the Board has determined to provide the claimant another opportunity to appear and testify in this matter. At the next hearing, the employer is directed to produce Yossi Goldman to testify. The claimant will be afforded an opportunity to cross-examine Mr. Goldman regarding Mr. Goldman's testimony at the hearing held on January 10, 2022. The Judge shall play the phone conversation recordings that were taken into evidence as Exhibit 17, and the claimant shall be afforded an opportunity to object to all of the exhibits admitted into evidence at the January 10, 2022 hearing. The parties shall be afforded an opportunity to present additional relevant and material testimony and evidence. The Judge shall take such further testimony and evidence as may be necessary to complete the record.

Now, based on all of the foregoing, it is

ORDERED, that the decisions of the Administrative Law Judge, insofar as they sustained the initial determinations of voluntary separation from employment without good cause, recoverable overpayments of regular unemployment, FPUC and LWA benefits, willful misrepresentation and civil monetary penalty, be, and the same hereby are, rescinded; and it is further

ORDERED, that the cases shall be, and the same hereby are, remanded to the Hearing Section to hold a hearing on the issues of voluntary separation from employment without good cause, recoverable overpayments of regular unemployment, FPUC and LWA benefits, willful misrepresentation and civil monetary penalty ONLY, upon due notice to all parties and their representatives; and it is further

ORDERED, that the hearing shall be conducted so that there has been an opportunity for the above action to be taken, and, so that at the end of the hearing, all parties will have had a full and fair opportunity to be heard; and it is further

ORDERED, that an Administrative Law Judge shall render a new decision, on the issues of voluntary separation from employment without good cause, recoverable overpayments of regular unemployment, FPUC and LWA benefits, willful

misrepresentation and civil monetary penalty, which shall be based on the entire record in this case, including the testimony and other evidence from the original and the remand hearings, and which shall contain appropriate findings of fact and conclusions of law.

MICHAEL T. GREASON, MEMBER